

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
CTC Video Services, LLC)	CS Docket No. 97-80
)	
Request for Waiver)	CSR-7176-Z
of 47 C.F.R. § 76.1204(a)(1))	

REPLY OF CTC VIDEO SERVICES, LLC

CTC Video Services, LLC ("CTC") hereby responds to the comments of the Consumer Electronics Association ("CEA")¹ filed in opposition to CTC's request for a waiver of Section 76.1204(a)(1) of the Commission's Rules.² Contrary to CEA's suggestions, and as demonstrated in its Request,³ grant of CTC's request for limited and temporary relief from the application of the integration ban would serve the public interest by promoting competition in video and broadband access services in the rural and small town areas of west-central North Carolina.

CEA complains that CTC's Request (1) is inconsistent with established waiver standards; (2) does not provide documentation of the cost levels it faces; (3) is somehow affected by the fact that CTC made no reference to rules as to which no waiver is sought; and (4) is "vague" because CTC proposes alternative approaches to timely compliance.

¹ Comments of the Consumer Electronics Association on CTC Video Services, LLC Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (May 3, 2007) ("CEA Comments").

² 47 C.F.R. § 76.1204(a)(1)

³ CTC Video Services, LLC Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7176-Z (Mar. 23, 2007) ("Request").

These objections are based either upon a misreading of CTC's Request or a failure to consider all pertinent information. In no event do CEA's objections constitute a basis for denying the Request.

I. CTC's Request Satisfies Established Waiver Standards

CEA incorrectly suggests that the Request does not meet established criteria for grant of the requested waiver. To the contrary, as demonstrated by the Request, grant of the limited waiver would produce "clear, non-speculative public interest benefits,"⁴ and fully satisfy the general waiver standards of Section 76.7(i) of the Commission's Rules.⁵ The introduction and promotion of competitive and advanced broadband services is specifically recognized by the Commission as furthering the public interest,⁶ and that goal would be furthered by grant of the requested relief.

⁴ See *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 209,218 (2007); *In the Matter of Millennium Telecom, LLC dba OneSource Communications*, Mem. Opin. & Order, DA 07-2009, ¶ 10 (rel. May 4, 2007). Ignoring these decisions, CEA by omission incorrectly suggests that only Section 629 regulations provide a basis for grant of the requested relief (CEA Comments at pp. 3-4), focusing its comments on specific elements of the Section 629 standards as sufficient reason to reject CTC's request (for example, faulting CTC for not confining its request to less sophisticated, so-called "low-end" set-top boxes (CEA Comments at pp. 1 and 3)).

⁵ 47 C.F.R. § 76.7(i) ("The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request . . ."); see also *WALT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (particular facts result in strict compliance being inconsistent with the public interest); see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (special circumstances warrant deviation from a general rule where the public is better served).

⁶ See, e.g., Commission's Strategic Goals: "All Americans should have affordable access to robust and reliable broadband products and services. *Regulatory policies must promote technological neutrality, competition, investment, and innovation* to ensure that broadband service providers have sufficient incentive to develop and offer such products and services." Statement of Commission's Strategic Goals, www.fcc.gov/broadband/ (*emphasis supplied*). See also, Opening Remarks of FCC Chairman Kevin Martin to the Advisory Committee on Diversity for Communications in a Digital Age (Dec. 21, 2006):

(footnote continues on nextpage)

CTC sought a temporary waiver of the July 1, 2007 deadline for each of the set top boxes it intends to deploy, including those with more advanced functionalities. Although the Request did not provide a specific breakdown of how many boxes of each type CTC expects to deploy because of the confidential nature of its marketing plans and capabilities, CTC is willing to disclose publicly its expectation that 60-70% of the boxes it deploys will be the low-end standard definition (SD) boxes having neither high definition (HD), nor digital video recorder (DVR) capability. CTC estimates that the remaining 30-40%, of set-top boxes will consist of some combination of SD/DVR, HD, and HD/DVR boxes. CTC also notes that television sets with HD capability will likely have a CableCARD slot and a digital tuner. Accordingly, grant of this will preclude customer choice of equipment.

CTC also wishes to emphasize that, to date, it has not been able to obtain assurances that compliant set top boxes supporting any of these services will be available by July 1, 2007. Notwithstanding availability, however, the necessity for the requested waiver, and the circumstances which warrant its grant, is that immediate compliance with

(continuation of n. 6 from previous page)

Expanding the reach of broadband and other advanced communications services has been my top priority as Chairman and I look forward to working with this Committee on ways to ensure that **all** Americans have opportunities to participate in the deployment of these new technologies.

(http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269158A1.doc).

Similarly, the Commission has determined that terrestrial video competition is vital. The Chairman has stated: "I believe it is critical then that the Commission act to remove regulatory barriers to the ability of a second cable operator to enter the market. When consumers have the ability to choose among more than one cable operator, they receive one of the most important benefits of competition that the 1996 Act envisioned lower prices." Statement of Chairman Kevin J. Martin, *Re: Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266 (News Release, Dec. 20, 2006).

the subject rule will result in costs which impact CTC's ability to offer an effective, competitive product to customers in its territory. Furthermore, the potential for the availability of alternative compliant technologies during the waiver period such as IPTV and downloadable security offer the potential for a more reliable, flexible, and economical service. In short, the specific circumstances and timing underlying CTC's introduction of a new competitive service all combine to justify the requested waiver under the standards established by the Commission. In contrast, the immediate deployment of compliant boxes using available technologies would place an unreasonable economic burden on a new market entrant, and lock CTC into a technology that may not be its best long-term solution.

II. CTC's Cost Projections are Supported by the Record

CEA also erred in suggesting that CTC provided no support for its cost estimates. CTC did, in fact, provide its declaration in support of the accuracy of the calculations it provided to show the difference in cost between a low-end compliant and non-compliant box including the separate CableCARD, based upon the price quotes it received from its vendor.⁷ With this filing, CTC again verifies that its cost for a standard definition (SD) box without DVR capability together with a separate CableCARD will be more than twice the current cost of an integrated box with similar capabilities.

CTC cannot comment on or attest to the accuracy of the record cited by CEA⁸ or the cost to be paid by other cable providers because it lacks specific knowledge of the

⁷ CTC has entered into a non-disclosure agreement with its vendor, which precludes the disclosure of confidential information, including pricing. It has received permission from the manufacturer to make a confidential filing with more specific information and will supplement the record as soon as possible.

⁸ CEA states that CTC's 100% cost increase claims are contrary to the record and points to numerous filings, most of which contain no cost data whatsoever. In one instance, CEA's president cites expertise within CEA's membership and estimated that initial manufacturing costs of non-integrated set top

prices available to differently situated providers who may have more market power.

While CTC can attest only to its own costs, it does note that in a similar petition granted by the Commission, GCI Cable, Inc. indicated a similar increase in costs.⁹

111. CTC Is and Will Be Compliant with CableCARD Support Requirements

CEA ignored footnote 16 in the Request when it averred that CTC made no clear reference to past, present ~~of~~ future support of CableCARD.¹⁰ CTC saw no reason to note with specificity that it complies with existing regulations, nor did it understand itself to be obligated to confirm that it planned to remain in compliance with rules as to which no waiver is sought. As confirmed in the Request, CTC maintains an inventory and stands ready to deploy and bill for use of CableCARDs. Similarly, CTC did not see the need to mention that its video service will meet the FCC's goal of ~~an~~ all-digital network immediately, but so confirms in this submission.

If CEA's concern is that CTC would not support CableCARD-reliant competitive navigation devices, CTC will specifically alleviate that fear. CTC's purpose and intent is to serve its customers' needs. If CTC's customers purchase navigation devices or DVRs that rely on current or future CableCARD standards, CTC intends to meet those customer

boxes to be \$10 to **\$15** per box. He then translated his manufacturing estimate to a product cost estimate of \$40 and noted that the cable industry's estimates of cost increases ranging from \$72 to \$93 must be inaccurate. CTC notes for the record that Mr. Shapiro provided neither documentation for nor his personal certification of the accuracy of the information in his letter. *See* Letter from Gary Shapiro, President and CEO, CEA, to The Honorable Kevin J. Martin, et al., *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, (Nov. 20, 2006)) In contrast, CTC's estimates are based upon firm quotes from its supplier, reflecting CTC's specific circumstances including its lack of bargaining power with suppliers as compared to national providers. It should also be noted that it appears that the actual cost of purchasing a separate CableCARD is missing from CEA's numbers.

⁹ "GCI estimates that **if** it is required to provide CableCARD-enabled boxes, 'it would incur a more than two-fold increase in standard box acquisition costs and near 20 percent increase in digital video recorder ("DVR") boxes in order to obtain compliant devices.'" *In the Matter of GCI Cable, Inc.* Mem. Opin. & Order, DA 07-2010, ¶ 7 (rel. May 4, 2007).

¹⁰ "As required by the Commission's Rules, an adequate supply of CableCards will be available for customers requesting modular security components." Request at n. 16.

needs. The historic success of CTC's affiliates in providing communication and data services has hinged on first, identifying customer needs, and then providing services that meet those needs. CTC believes that success in the video market depends on those same principles.

IV. The Request Provides Clear, if Alternative, Means toward Compliance

Contrary to CEA's suggestion, and as the Request clearly demonstrated, CTC seeks only a waiver of the integration ban which is limited both as to duration and impact – a maximum of eighteen (18) months within which to provide to a limited number of customers a less expensive integrated single device rather than through a more expensive device coupled with a separate CableCARD. CTC does not seek a waiver of the requirement to support CableCARDS in general.

CEA mischaracterized CTC's waiver request as other than temporary and limited in suggesting that CTC's recognition that there exist alternative methods of compliance taints the waiver request or impugns CTC's motives. CTC did not specify whether it would deploy boxes using CableCARDS, opt for a downloadable security, move to a compliant IPTV platform, or discover some other solution not yet contemplated because the best choice is not yet clear. It is the fact of compliance at the end of the requested grace period, not the means thereto, which should be at issue. In fact, CTC noted that its initial plan was to offer IPTV, and that remains its long-term plan. CTC does not believe that either IPTV technology or downloadable security has developed sufficiently to deliver the level of functionality and customer service required in today's marketplace. CTC contends that its immediate inability to declare the path to compliance reflects the

future's vague nature rather than ~~an~~ open-ended request or CTC's lack of commitment to achieve compliance within the time frame specified.

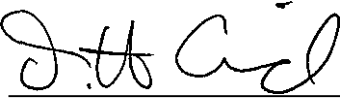
CEA's comments not only mischaracterized the facts to suit a negative recommendation, they also neglected to address key rationale for granting CTC's request both specifically spelled out and implied. Grant of a temporary and limited waiver of the July 1, 2007 integration ban will further the viability of CTC's video services. Addition of those video services to voice and wide band Internet already offered today will speed up the deployment of fiber to the home by CTC's affiliate rural ILEC. The net result will be a network that supports all digital" service and provides upload and download speeds of 80 Mbps on a consistent basis".

V. Conclusion

In view of the foregoing, CTC respectfully submits its waiver request is justified, and requests prompt grant of the relief requested herein.

Respectfully submitted,

CTC Video Services, LLC.

By: 
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May 14, 2007

¹¹ See Remarks of FCC Chairman Kevin J. Martin to the National Cable & Telecommunications Association, Las Vegas, NV, May 7, 2007, (As Prepared For Delivery) Pg. 5 Now there are certain instances where a waiver may be appropriate. For instance, when a cable operator is deploying an all-digital system.

¹² CTC's fiber to the home network will be engineered to provide 80Mbps on a regular basis to all customers and will be capable of providing much higher speeds to a subset of customers if required.

DECLARATION OF DAVID H. ARMISTEAD

I, David H. Armistead, of CTC Video Services, LLC, do hereby declare under penalty of perjury that I have read the foregoing "Reply of CTC Video Services, LLC," and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'D. H. Armistead', written over a horizontal line.

David H. Armistead

Dated: May 14, 2007

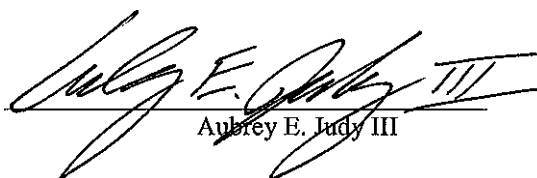
Certificate of Service

I, Aubrey E. Judy III, Director of Regulatory Affairs, CTC Video Services, LLC, hereby certify that on this 14th day of May, 2007, I caused to be delivered, via first-class US mail, postage prepaid, a copy of the foregoing "Reply of CTC Video Services, LLC" on the following:

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